

Response to Welsh Government consultation on Mandatory Licensing of Special Procedures in Wales

April 2023

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at www.professionalstandards.org.uk
- 1.2 As part of our work we:
- Oversee the ten health and care professional regulators and report annually to Parliament on their performance
 - Accredit registers of healthcare practitioners working in occupations not regulated by law through the Accredited Registers programme
 - Conduct research and advise the four UK governments on improvements in regulation
 - Promote right-touch regulation and publish papers on regulatory policy and practice.

2. General comments

- 2.1 We welcome the opportunity to respond to the Welsh Government consultation on licensing of special procedures in Wales. We are happy for any part of our response to be published. As the oversight body for the healthcare professional regulators¹, and with responsibility for running the Accredited Registers programme for unregulated practitioners, we support the Welsh Government's intention to address some of the outstanding risks associated with the carrying out of special procedures.²
- 2.2 However, when developing the scheme, it is important that the Welsh Government fully consider how licensing will interact with existing means of assurance, including both statutory regulation and voluntary registration through the Accredited Registers programme. This includes identifying any potential perverse incentives or unintended consequences created by the proposed scheme. This will also be important when considering any future expansions to the scheme, for example if bringing in a wider range of non-surgical cosmetic procedures.

¹ The nine healthcare professional regulators and the social work regulator for England.

² Including acupuncture, body piercing, electrolysis and tattooing.

Licensing of special procedures within the current regulatory landscape

- 2.3 As the consultation document notes, it is currently open to both regulated professionals and unregulated practitioners to carry out the special procedures that will be within scope of the new licensing scheme.
- 2.4 In addition to the existing requirements in Wales for Local Authority registration under the 1982 Act, this group will include professionals registered with any of the statutory health and care professional regulators and those that are on a voluntary register, including those that are accredited by the Authority under the Accredited Registers programme, such as the British Acupuncture Council (BAcC). Accredited Registers provide a mechanism to raise standards amongst the unregulated workforce and provides reassurance to members of the public and employers that practitioners meet set standards of education and training, comply with codes of practice and promote access to appropriate complaints mechanisms.³
- 2.5 Some of the procedures in scope are currently practised by practitioners on registers we accredit. We note that the Welsh Government is currently proposing to permit a (defined) exemption from licensing requirements for statutorily registered healthcare professionals but not for those voluntarily registered with an organisation accredited under the Accredited Registers programme.
- 2.6 We suggest that further consideration should be given to the approach to exemptions and how the scheme will interact with existing statutory and non-statutory forms of regulation. Whilst membership of an Accredited Register is not mandatory, we think that the Welsh Government should consider whether an exemption for certain members of this group would be possible to avoid creating perverse incentives. This could include having the unintended consequence of disincentivising membership of Accredited Registers due to the introduction of additional layers of regulatory burden. We have provided further information on this point in our answers to questions 8-12.

Other key issues

- 2.7 We have previously supported licensing as a proportionate alternative to statutory regulation. We welcome the Welsh Government's consideration of this option as a more flexible alternative mechanism to manage the risks identified, subject to the queries we have raised above about how the proposed scheme will fit with existing regulatory frameworks and avoid negative unintended consequences.
- 2.8 Some additional queries about the implementation of the licensing scheme in practice include:
- Enforcement of the licensing scheme - the licensing scheme will only be effective in addressing poor practice if the Welsh Government are clear about why existing mechanisms available to local authorities (e.g. model byelaws) haven't been utilised to date and how the proposed scheme will

³ Our work with accredited registers: <https://www.professionalstandards.org.uk/what-we-do/accredited-registers>

address this. As there will clearly be a heavy reliance on local authority enforcement of the licensing scheme it will be important to fully understand whether inaction to date is as a result of inadequate powers or lack of resource to enforce. If it is the latter the new scheme may be equally ineffective in addressing the problems identified unless resources are guaranteed. It would be helpful to understand if funding received from the fees for the scheme will be ringfenced for enforcement purposes.

- Consistency across the UK – we recognise that Wales have taken a particular approach in developing a scheme initially focussed on specified procedures in contrast to England and Scotland who are developing broader schemes focussed on non-surgical cosmetic procedures. In our view, it is in the interests of the public who may access services in different parts of the UK and practitioners to have a broadly level playing field in terms of requirements across the different schemes. We would urge all UK countries developing such schemes to work closely together to ensure a consistent approach as far as possible.

3. Detailed comments

- 3.1 We have only provided answers to the questions where we have specific views or expertise to contribute.

Questions related to 7: exemptions

Question 8 – Do you agree with the principle of this proposal that regulations should be made to limit the exemptions on members of the listed professional bodies in section 60?

- 3.2 We support the intention to limit the layers of additional regulation faced by appropriately qualified statutorily regulated professionals carrying out special procedures. However, we agree that it would be logical to make regulations to define more narrowly those members of a statutory professional register who should be able to claim an exemption as outlined in the consultation document.
- 3.3 As the majority of statutorily regulated professionals are regulated based on their role not on the activities they carry out, a blanket exemption could be seen to be at odds with the purpose of the scheme to require a minimum level of qualification/training for those carrying out special procedures (depending on what is deemed to be sufficient evidence of competence beyond the level 2 infection control qualification specified).
- 3.4 We note that even with the criteria outlined at 7.3 of the consultation document⁴, there is likely to be a significant degree of autonomy for

⁴ From consultation document: 7.3 - **We propose** that members of a profession regulated by these named bodies under s60(2) should **not** hold blanket exemptions for **all** four special procedures, but regulations should be made to limit their exemption(s) as follows:

- The individual must be registered with a qualifying regulated mandatory professional body

professionals in deciding whether they have sufficient expertise or whether carrying out the procedure is within their scope. It is unclear from proposals to what degree Local Authorities will be required to assess evidence of competence for those applying for an exemption in contrast to those applying for a licence and how competence will be defined.

- 3.5 Statutorily regulated professionals are required to demonstrate that they are competent to carry out the procedures they undertake. However, as special procedures are likely to fall outside of the scope of their core professional education and training it will be important for Local Authorities to look carefully at any evidence provided as these areas of training will generally not be quality assured by their professional regulator.
- 3.6 Depending on how minimum competence is defined and assessed this may create a quirk in the scheme where statutorily regulated professionals with some additional training may apply for an exemption whereas more highly qualified specialists on an Accredited Register (e.g. acupuncturists requiring a degree level qualification) may not.
- 3.7 We agree with the requirement to hold appropriate indemnity insurance covering the procedures an individual will be carrying out but would suggest reviewing the wording of this criterion to make it clear that self-employed individuals should obtain indemnity insurance from a legitimate provider.

Question 9 – Do you agree with the principle of this proposal that regulations should be made under section 69 to apply exemptions to premises at which exempt members of these professional bodies will practise?

- 3.8 We agree with the principle of applying an exemption for premises at which exempt professionals will practise, providing they will be carrying out the special procedure within the NHS or in a private premises regulated by Healthcare Inspectorate Wales (HIW).
- 3.9 However, we are of the view that this exemption could also apply to non-statutorily regulated practitioners in defined circumstances, see our answer to question 12.

Question 10 – Do these exemption principles for individuals and premises adequately protect the safety and health of the client?

- 3.10 We broadly agree that the exemption principles should protect the safety and health of clients. However, as outlined in our answer to question 8, depending on what the requirements will be for Local Authorities to assess evidence of

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- The special procedure is within their area of expertise and is considered 'in scope' and is therefore the subject of indemnification by the organisation they work for, or through self-indemnity if self-employed
 - The special procedure is performed within the National Health Service or privately regulated healthcare service regulated by Healthcare Inspectorate Wales (HIW)
 - If the individual ceases to be registered for any reason, their exemption would cease, and they would have to obtain a special procedure licence if they still wished to perform that special procedure.

competence provided, the criteria are still likely to allow significant flexibility for professionals to self-assess whether carrying out special procedures falls within their scope of practice and whether they have sufficient training.

- 3.11 Statutory professional regulation generally doesn't regulate the tasks that professionals carry out, so it is down to the professional to consider whether they have the appropriate experience and expertise. This may create challenges for professional regulators when assessing whether a professional has acted outside of their competence.
- 3.12 We note that based on current proposals, it is unclear whether those applying for an exemption will be required to evidence their competence in contrast to those applying for a licence. We suggest that further consideration is given to this point including how evidence of competence will be assessed.
- 3.13 We agree that it is crucial that indemnity arrangements cover the specific procedures in question.

Question 11 – Do you agree with the principle of this proposal that the statutory registered HCPC named professions of chiropodists/podiatrists; physiotherapists; prosthetists/orthotists should be exempt? Are there other professions on this register that should have an exemption?

- 3.14 We do not have detailed knowledge of which professions on the Health and Care Professions Council (HCPC) register are more or less likely to carry out such special procedures. However, as the regulations will outline that professionals must ensure that the special procedure is within their competence and that they have appropriate indemnity insurance, then we are unclear on the logic for limiting which groups of HCPC registrants may apply for an exemption.
- 3.15 As noted above, professional regulation is generally based on regulation of the role not the tasks that an individual carries out so there is no particular logic to limiting the option of applying for exemption to only certain groups of professionals.

Question 12 – Do you agree with the principle of the proposal that members of voluntary registers accredited by the PSA should not be exempt?

- 3.16 No, we do not understand the logic of not allowing an exemption for members of a voluntary register accredited by the Professional Standards Authority under its Accredited Registers programme if exemptions are to be permitted for statutorily regulated professionals.
- 3.17 The consultation document states that exemption shouldn't apply because membership of Accredited Registers is voluntary, however in our view this is immaterial. If an exempt practitioner was removed from or chose to leave membership of the Accredited Register, then they would automatically be required to obtain a licence from the Local Authority in the same way a statutorily regulated professional would be if they were no longer regulated.

- 3.18 As noted in our response to question 8, depending on how minimum competence is defined this may create a quirk in the scheme where statutorily regulated professionals with some additional training may apply for an exemption whereas more highly qualified specialists on an Accredited Register (e.g. acupuncturists requiring a degree) may not.
- 3.19 We recognise that the Welsh Government may not wish to permit a blanket exemption for practitioners on Accredited Registers. However, we suggest it would be possible to specify certain criteria to identify those eligible for an exemption, in a similar way as the consultation proposes criteria to be captured in regulations for statutorily regulated professionals who may claim an exemption.
- 3.20 In our view it is important that the Welsh Government give consideration to allowing some kind of exemption for appropriately qualified AR practitioners. The Accredited Registers programme has been an important mechanism to raise standards amongst unregulated practitioners and allows members of the public and employers to choose practitioners who are properly trained and who comply with clear standards of practice.
- 3.21 We recognise that this licensing scheme is largely intended to capture those practitioners who are not subject to any other form of regulation and raise standards at the lower end. However, without any changes to the scheme it could have the unintended consequence of discouraging membership of Accredited Registers as practitioners may not wish to be subject to two overlapping layers of regulatory burden.

4. Further information

- 4.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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